

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD PLASTER,
Plaintiff

v.

JEFFREY BEARD, SECRETARY
OF THE PENNSYLVANIA
DEPARTMENT OF
CORRECTIONS, ET AL.,
Defendants

No. 3:06cv1655

(Judge Munley)

(Magistrate Judge Blewitt)

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MEMORANDUM

Before the court for disposition are several reports and recommendations of United States Magistrate Judge Thomas M. Blewitt and plaintiff's motion to file an amended complaint. The reports and recommendations at issue are dated July 24, 2007, June 25, 2007 and June 20, 2007.

Background

The *pro se* Plaintiff is an inmate at the State Correctional Institution at Frackville, Pennsylvania. He instituted the instant civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff asserts that the defendants violated his Eighth Amendment right to proper medical care by failing to provide him with a knee brace he needs for a chronic dislocating knee and loose knee problem. The defendants have moved to dismiss the case.

Discussion

The July 24th report suggests the following: that we grant the motion to dismiss filed by the medical defendants¹ (Doc. 29); that we deny the

¹The medical defendants are Dr. Sterling, PA Slivka and PA Ellesworth.

motion to dismiss filed by the corrections officers², (Doc. 34); that we deny the plaintiff's motion to stay his opposition brief (Doc. 89)³; that we deny plaintiff's third request for relief of copies and mailing charges (Doc. 90, p4); and that we remand the case to the magistrate judge for further proceedings.

On August 6, 2007, the plaintiff filed objections to the report and recommendation. Subsequently, on August 8, 2007, plaintiff filed a motion for leave to file an amended complaint. (Doc. 102).

The law provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served[.]" FED. R. CIV. PRO. 15(a). In the instant case, no responsive pleading was filed with regard to the original complaint.⁴ Thus, plaintiff may file an amended complaint as a matter of course. The Clerk of Court will be directed to docket the amended complaint attached to the plaintiff's motion.

The original complaint will be superceded by the amended complaint. Thus, the motions to dismiss that were directed at the original complaint are now moot and will be denied as such. See Harrison v. Keystone

²The correction officer defendants are Defendants Kneal and Malewski.

³In the recommendation section of the report and recommendation, this motion is listed as Document 79. (Doc. 95 at 43). We believe that this is a typographical error, and the actual motion is Document 89 as discussed in the body of the report. (Id. at 11).

⁴The defendants filed motions to dismiss, but motions to dismiss are not responsive pleadings. Phillips v. Borough of Keyport, 179 F.R.D. 140, 145 (D.N.J. 1998).

Coca-Cola Bottling Co., 428 F. Supp. 149, 151 (D.C.Pa. 1977). Plaintiff's motion for an extension of time to file a brief in opposition to the motions to dismiss (Doc. 89) will also be denied as moot.

The other reports and recommendations before the court (Doc. 86 and Doc. 88) suggest the denial of plaintiff's motion for a video conference and for a protection from abuse order (Doc. 79). No objection has been filed to these reports and recommendations and the time for such filing has passed. Additionally, no objection has been filed to the recommendation that the plaintiff's third request for relief from paying for copies and mailing his filings in this case be denied. In order to decide whether to adopt these recommendations, we must determine whether a review of the record evidences plain error or manifest injustice. See, e.g., Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983); FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); 28 U.S.C. § 636(b)(1).

After a careful review, we find neither a clear error on the face of the record nor a manifest injustice with regard to these issues, and therefore, we shall adopt the report and recommendation and deny the motion for a video conference and protective order and deny plaintiff's third request for relief from paying for copies and mailing his filings.

Finally, this matter shall be remanded to Magistrate Judge Blewitt for further proceedings. An appropriate order follows.

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No. 3:06cv1655
(Judge Munley)
(Magistrate Judge Blewitt)

ORDER

AND NOW, to wit, this 17th day of October 2007, it is hereby
ORDERED as follows:

Plaintiff's motion for leave to file an amended complaint (Doc. 102) is
GRANTED, and the Clerk of Court is directed to docket the amended
complaint attached to the motion.

The motions to dismiss the original complaint (Doc. 29 & Doc. 34)
are **DENIED AS MOOT**. Thus, the report and recommendation regarding
these motions (Doc. 95) is not adopted.

The report and recommendations dated June 20, 2007 and June 25,
2007 (Doc. 86 & Doc. 88) are **ADOPTED** and the plaintiff's motion for
video conference and protective order (Doc. 79) is **DENIED**.

Plaintiff's motion to stay plaintiff's opposition brief with regard to the
motions to dismiss (Doc. 89) is **DENIED AS MOOT**.

Plaintiff's third request for relief of copies and mailing money charges
(Doc. 90, p4) is **DENIED**.

The Clerk of Court is directed to remand this case to Magistrate
Judge Blewitt.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court